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Attorneys for Plaintiff  
NIAGARA BOTTLING, LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

NIAGARA BOTTLING, LLC,

Plaintiff,

v.

RITE-HITE COMPANY, LLC, RITE-  
HITE PRODUCTS CORPORATION,  
ARBON EQUIPMENT  
CORPORATION, ELETTRIC 80,  
INC., and DOES 1-10, inclusive,

Defendants.

Case No. \_\_\_\_\_

**PLAINTIFF NIAGARA  
BOTTLING, LLC'S COMPLAINT  
FOR:**

- (1) BREACH OF CONTRACT**
- (2) BREACH OF EXPRESS  
WARRANTY**
- (3) BREACH OF IMPLIED  
WARRANTY FOR A  
PARTICULAR PURPOSE**
- (4) STRICT LIABILITY—  
DESIGN DEFECT**
- (5) NEGLIGENCE**
- (6) MISREPRESENTATION**
- (7) UNFAIR COMPETITION**

**DEMAND FOR TRIAL BY JURY**

1 Plaintiff Niagara Bottling, LLC (“Niagara”) brings this action against Rite-  
2 Hite Company, LLC, Rite-Hite Products Corporation, and Arbon Equipment  
3 Corporation (collectively, “Rite-Hite” or “Rite-Hite defendants”) and Elettric 80,  
4 Inc. (“E80”), and alleges as follows:

### 5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction, pursuant to 28 U.S.C. § 1332, because  
7 there is diversity among the parties and the amount in controversy exceeds the sum  
8 or value of \$75,000.

9 2. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b)(2), in  
10 that a substantial part of the events or omissions giving rise to Plaintiff’s claims  
11 occurred in this District. Additionally, various contracts described below contain  
12 forum-selection clauses establishing venue in this District.

### 13 **THE PARTIES**

14 3. Niagara is a limited liability company organized and existing under the  
15 laws of the State of Delaware, with its principle place of business in Ontario,  
16 California. Niagara is a family-owned business and is a leading bottled water  
17 manufacturer in the United States, supplying major retailers across the nation with  
18 purified, sparkling, and vitamin enhanced water. Niagara has facilities across the  
19 country, including in California, Georgia, Ohio, Wisconsin, Texas, Washington and  
20 Indiana.

21 4. On information and belief, Rite-Hite is a collection of companies that  
22 distribute and service equipment for use on commercial loading docks.  
23 Collectively, the Rite-Hite defendants operated together as one entity to negotiate,  
24 sell, design, service, and install dock levelers for Niagara. Rite-Hite Company,  
25 LLC (successor-in-interest to Rite-Hite Corporation) is a Wisconsin limited liability  
26 company. Rite-Hite Products Corporation, and Arbon Equipment Corporation are  
27 each Wisconsin corporations. Each of the Rite-Hite defendants is located at 8900  
28 North Arbon Drive, Milwaukee, Wisconsin 53223. Niagara is informed and

1 believes, and based thereon alleges, that, at all relevant times herein referred to,  
2 each of the Rite-Hite defendants was the agent, principal, representative and/or  
3 employee of the other Rite-Hite defendants and, in doing the acts alleged herein,  
4 was acting within the scope of such agency, representation, and/or employment.

5 5. E80 is an Illinois corporation, with its principal place of business in  
6 Skokie, Illinois. E80 manufactures and distributes laser-guided vehicles (“LGVs”)  
7 for use in commercial distribution settings.

8 6. As of the date of the filing of this Complaint, Niagara is ignorant of the  
9 true names and capacities of the defendants sued herein as DOES 1 through 10,  
10 inclusive, and therefore Niagara sues such defendants by said fictitious names.  
11 Niagara is informed and believes, and based thereon alleges, that each defendant  
12 sued in a fictitious name is in some manner responsible for the events and acts  
13 herein referred to and caused damages to Niagara as herein alleged. It is believed  
14 that DOES 1 through 10 may include other entities related to the named defendants  
15 and/or their individual officers, directors and/or employees. When Niagara learns  
16 said defendants’ true names and the facts giving rise to causes of action against  
17 these defendants, Niagara will amend this Complaint to allege the true names and  
18 capacities of these defendants.

### 19 **BACKGROUND**

#### 20 ***A. Niagara’s Purchases of E80 LGVs***

21 7. Niagara operates beverage bottling and distribution plants at a number  
22 of locations throughout the country. Among the logistical challenges Niagara faces  
23 in its business is the safe and efficient loading and unloading of trucks transporting  
24 Niagara’s products to and from its distribution plants.

25 8. Beginning in 2009, Niagara entered into negotiations with E80 for the  
26 design and purchase of LGV forklifts for use at Niagara’s plant. E80’s LGV  
27 forklifts are able to autonomously load pallets carrying Niagara’s products onto  
28 trucks ready for shipment, thus increasing the safety and efficiency of Niagara’s

1 operations. Niagara began taking delivery of E80's LGVs in June 2010. At the  
2 time of its original purchase of LGVs, E80 represented that that the total weight of  
3 each LGV (including with its battery) was approximately 7,660 kg (about 16,887  
4 pounds). Knowing the true weight of the LGVs is material to Niagara's ability to  
5 use the LGVs safely and effectively at Niagara's facilities.

6 9. In 2012, E80 represented to Niagara that it had made modifications to  
7 its LGVs, such that the new models were now approximately 2,200 pounds lighter  
8 than the earlier models. E80 submitted numerous design documents to Niagara,  
9 which detailed the dimensions and weight of the newer LGVs. For instance, in  
10 September 2012, E80 provided Niagara with a PowerPoint presentation that  
11 identified modifications E80 made to the LGVs, including that the new LGVs  
12 would go from a weight of 7,600 kg (16,534 pounds) down to 6,500 kg (14,330  
13 pounds). E80 confirmed the lower weight of its LGVs in several documents it  
14 provided to Niagara, including design data specifications that were provided to  
15 Niagara on or about September 6, 2012, September 10, 2013, June 30, 2014, and  
16 August 13, 2014.

17 10. Based on E80's representation that the new LGVs weighed 6,500 kg  
18 (14,330 pounds), Niagara reasonably believed that the total weight of the LGVs  
19 when fully loaded with two pallets of bottled waters was approximately 19,530  
20 pounds.

21 11. Prior to 2014, Niagara's orders of LGVs from E80 were subject to  
22 specific written purchase orders, which Niagara would submit to E80 containing the  
23 terms and conditions of the purchase order. E80 accepted these terms by accepting  
24 the purchase orders and fulfilling the orders as described.

25 12. Starting in 2014, Niagara's purchases of LGVs from E80 became  
26 subject to a written Master Agreement. When Niagara would purchase additional  
27 LGVs, Niagara and E80 would execute amendments to the Master Agreement  
28 (hereinafter, the Master Agreement and subsequent amendments are collectively

1 referred to as the “Master Agreement”). The original Master Agreement expressly  
2 incorporated the LGV design specifications that were provided to Niagara in  
3 August 13, 2014, which indicated that the weight of an LGV was 6,500 kg.

4 13. In the Master Agreement, Niagara and E80 agreed, among other  
5 things, that: (a) E80 would design and manufacture its LGVs to conform to the  
6 technical specifications set forth in each purchase order submitted by Niagara;  
7 (b) the Agreement was governed by the California Commercial Code; and (c)  
8 Niagara was relying on E80’s expertise in manufacturing the LGVs to meet  
9 Niagara’s specific needs.

10 14. Since 2009, Niagara has purchased more than 280 LGVs from E80,  
11 including more than 250 since E80’s representations (beginning in 2012) that its  
12 LGVs weighed 1,000 kilograms less than previous models.

13 ***B. Niagara’s Purchases of Rite-Hite Dock Levelers***

14 15. Dock levelers literally bridge the gap between Niagara’s distribution  
15 plants and trucks awaiting shipment. A dock leveler is a ramp-type device that  
16 allows Niagara’s LGVs to move cargo from a loading dock to trailers for shipping  
17 and receiving purposes. See RHH-4000 Hydraulic Loading Dock Leveler,  
18 RITEHITE.COM (available at [https://www.ritehite.com/en/am/resource-](https://www.ritehite.com/en/am/resource-center/videos/c57787888a9c457ab218fe337abc17bb/rhh4000)  
19 [center/videos/c57787888a9c457ab218fe337abc17bb/rhh4000](https://www.ritehite.com/en/am/resource-center/videos/c57787888a9c457ab218fe337abc17bb/rhh4000)).

20 16. From 2009 to 2015, Niagara spent more than \$7,000,000 upgrading its  
21 facilities by purchasing more than 200 RHH4000 dock levelers from Rite-Hite for  
22 use at facilities using LGVs. Specifically, Niagara purchased Rite-Hite dock  
23 levelers for use at its Rialto, CA, Atlanta, GA, Plainfield, IL, Columbus, OH,  
24 Houston, TX, San Antonio, TX, Tacoma, WA, and Kenosha, WI facilities, where  
25 Niagara also used E80’s LGVs to load and unload trucks.

26 17. Rite-Hite advertised its RHH4000 dock levelers as rugged, durable,  
27 and specifically designed to withstand heavy loads. Rite-Hite represented that the  
28 dock levelers would have a lifespan of at least 10 years. Rite-Hite also represented

1 that its dock levelers were designed and manufactured in accordance with industry  
2 standards. Prevailing industry standards require that certain safety factors be  
3 engineered into products like dock levelers. Those industry standards require that  
4 dock levelers be able to carry an additional 25% above their rated capacity,  
5 meaning that, if Rite-Hite's dock levelers were built in conformance to industry  
6 standards, they would have an actual capacity of 25,000 pounds. Knowing the true  
7 weight capacity of the dock levelers is material to Niagara's ability to use the dock  
8 levelers safely and effectively at Niagara's facilities.

9 18. Rite-Hite advertises its dock levelers as being designed and  
10 manufactured in accordance with industry standards because Rite-Hite knows that  
11 Niagara would rely on such a representation in selecting its dock levelers.

12 19. Niagara's purchases from Rite-Hite were subject to individually  
13 negotiated purchase orders. These purchase orders incorporated Niagara's standard  
14 terms and conditions, which included, among other provisions: (a) warranties by  
15 Rite-Hite that it was familiar with Niagara's particular requirements, including  
16 Niagara's product and packaging dimensions; (b) Rite-Hite's acknowledgment that  
17 Niagara was relying on Rite-Hite's expertise in recommending its dock levelers;  
18 and (c) the statement that Rite-Hite "guarantee(d) and warrant(ed) that all goods  
19 will be manufactured, assembled and commissioned in accordance with prevailing  
20 industry standards, and further guarantees that all goods will be fit for their  
21 intended, particular and represented purposes."

22 20. Rite-Hite accepted the terms in Niagara's purchase orders by accepting  
23 each purchase order without further negotiation of its terms, and then fulfilling the  
24 order.

25 21. Additionally, several of the purchase orders expressly required that the  
26 purchased dock levelers be designed to carry a gross load of up to 22,500 pounds.

27 22. In June 2014, Niagara and Rite-Hite entered into a Global Account  
28 Agreement in which Rite-Hite agreed to "provide loading dock and specialty door

1 engineering and design assistance,” which included the design and development of  
2 site-specific performance specifications.

3 ***C. The Failure of Rite-Hite’s Dock Levelers***

4 23. Beginning in 2014, Rite-Hite began making repairs on “stringers” and  
5 broken welds in the dock levelers at Niagara’s facilities. This sort of damage  
6 indicates that the dock levelers were not designed to withstand their stated capacity  
7 of 20,000 pounds, much less the 25,000 pounds required to meet industry standards.

8 24. From April 2016 to September 2016, Rite-Hite began informing  
9 Niagara that the problem was widespread, and likely caused by the use of LGVs  
10 that weighed more than the dock levelers could handle.

11 25. Niagara began investigating the cause of the failures, only to learn that  
12 both E80 and Rite-Hite had misled Niagara.

13 26. Niagara’s investigation revealed that, rather than decreasing in weight  
14 as E80 had promised in 2012, E80’s LGVs had in fact *increased* from 21,000  
15 pounds to 22,000 pounds when fully-loaded. Further review of the amendments to  
16 the Master Agreement revealed that E80 had inserted this increase into an  
17 amendment in August 2015, without informing Niagara that it was making this  
18 change, or that E80 could not deliver LGVs that weighed less than 20,000 pounds  
19 when fully loaded.

20 27. Additionally, Niagara conducted analysis of the failed dock levelers,  
21 which revealed that they were not manufactured in accordance with industry  
22 standards. Niagara’s analysis revealed that the dock levelers could not carry a load  
23 of anywhere near 20,000 pounds, much less the 25,000 pounds required to meet  
24 industry standards.

25 28. Further, it is apparent that Rite-Hite knew that the dock levelers were  
26 underperforming, as Rite-Hite intentionally left repairs it made to broken welds out  
27 of maintenance logs it maintained. Additionally, Rite-Hite improperly maintained  
28 the dock levelers, further exacerbating the damage.







1 the situation as required by the warranty provisions of the Master Agreement,  
2 saying only that it was premature.

3 37. Niagara has suffered damages caused by E80's breach, as Niagara  
4 would not have invested millions of dollars on LGVs that did not meet their stated  
5 specifications.

6 **Second Cause of Action**

7 (Breach of Contract Against Rite-Hite)

8 38. Niagara incorporates by reference all preceding paragraphs of this  
9 Complaint.

10 39. When Niagara purchased dock levelers from Rite-Hite, it did so by  
11 submitting detailed purchase orders to Rite-Hite. These purchase orders spelled out  
12 Niagara's specific requirements (*e.g.*, number of dock levelers needed, timing  
13 required, delivery instructions, etc.) as well as the terms and conditions Niagara  
14 required Rite-Hite to agree to. Rite-Hite accepted Niagara's offer by accepting the  
15 purchase orders and fulfilling the orders. Thus, the purchase orders are binding  
16 contracts between Rite-Hite and Niagara.

17 40. The purchase orders obligated Rite-Hite to ascertain Niagara's specific  
18 needs at the plant location relevant to the specific order. Rite-Hite was obligated to  
19 design and provide dock-levelers that met Niagara's specific needs, including that  
20 any dock levelers be sufficiently strong to bear the weight of the LGVs in use at  
21 Niagara's facilities.

22 41. Numerous purchase orders specifically required Rite-Hite to provide  
23 dock-levelers rated with a capacity of 22,500 pounds.

24 42. The purchase orders also obligated Rite-Hite to manufacture all dock  
25 levelers in accordance with industry standards, meaning that, at a minimum, the  
26 dock levelers would be able to support a load of up to 25,000 pounds.

27 43. Further, the 2014 Global Account Agreement required Rite-Hite to  
28 design and provide dock levelers specific to Niagara's needs, including taking into

1 account Niagara's use of LGVs.

2 44. Niagara fully performed its obligations under all of the purchase  
3 orders, as well as the 2014 Global Account Agreement.

4 45. Rite-Hite breached its contractual obligations to Niagara by providing  
5 dock levelers that were not capable of supporting the weight of the LGVs in use at  
6 Niagara's facilities.

7 46. Rite-Hite further breached its contractual obligations by failing to  
8 provide dock levelers manufactured in accordance with industry standards.

9 47. Rite-Hite's breach of its contractual duties to Niagara has caused  
10 Niagara to suffer damages by forcing Niagara to spend millions of dollars on dock  
11 levelers that did not conform to industry standards or stated specifications, and  
12 incur more than \$3,000,000 in replacement costs for the failed dock levelers.

13 **Third Cause of Action**

14 (Breach of Express Warranty Against All Defendants)

15 48. Niagara incorporates by reference all preceding paragraphs of this  
16 Complaint.

17 49. In the purchase orders entered into between Niagara and E80 prior to  
18 2014 and in the Master Agreement, E80 expressly warranted that the LGVs it  
19 delivered to Niagara would comply with the specifications agreed to with Niagara.  
20 In doing so, E80 expressly warranted that it would deliver LGVs that would work  
21 with Niagara's existing facilities, including Niagara's dock levelers.

22 50. For the LGVs Niagara ordered in 2012 and later, the LGVs' weight,  
23 which exceeded 20,000 pounds in the first instance, and then increased over time,  
24 was a material defect in the design and manufacture of the LGVs, which is covered  
25 by E80's warranties in the Master Agreement.

26 51. Niagara notified E80 of the discrepancy in the weight of the LGVs and  
27 Niagara's requirements within a reasonable time of learning that the LGVs were  
28 overweight.

1           52. To date, E80 has refused to rectify the situation by either replacing the  
2 LGVs with units that meet Niagara's requirements, or by reimbursing Niagara for  
3 the costs it has incurred in replacing the failed dock levelers that Rite-Hite claims  
4 was caused by E80's overweight LGVs.

5           53. Likewise, in each of the various purchase orders Rite-Hite accepted, as  
6 well as the 2014 Global Account Agreement between Niagara and Rite-Hite, Rite-  
7 Hite expressly warranted that it would design and provide dock levelers designed to  
8 meet Niagara's specific needs and that they would be manufactured in accordance  
9 with industry standards.

10          54. Rite-Hite's failure to design and provide dock levelers that met  
11 industry standards or Niagara's specific needs, as they were not capable of carrying  
12 the loaded weight of the LGVs in use at Niagara's facilities, was a material defect  
13 in both the design and manufacture of the dock levelers.

14          55. In 2016, when the systematic failure of Rite-Hite's dock levelers  
15 became apparent, Rite-Hite refused to honor its express warranties.

16          56. On August 3, 2018, Niagara notified Rite-Hite in writing of its failure  
17 to provide dock levelers that met the terms of Rite-Hite's express warranties.

18          57. Rite-Hite refused to substantively respond to Niagara's letter, choosing  
19 instead to file a frivolous and anticipatory lawsuit in the Eastern District of  
20 Wisconsin (Case No. 2:18-cv-1394).

21          58. As a result of Defendants' breaches of their respective express  
22 warranties, Niagara has suffered damage in the form of its purchase price for  
23 products that did not meet their stated specifications or industry standards, as well  
24 as the expenses it incurred in replacing the failed dock levelers.

25                                   **Fourth Cause of Action**

26                                   (Breach of Implied Warranty For a Particular Purpose

27                                   Against All Defendants)

28          59. Niagara incorporates by reference all preceding paragraphs of this

1 Complaint.

2 60. In contracting with Niagara to provide LGVs and dock levelers, E80  
3 and Rite-Hite each knew or had reason to know of Niagara's specific requirements  
4 and the particular purpose for the use of the LGVs and dock levelers at Niagara's  
5 distribution facilities. E80 and Rite-Hite were each advised of Niagara's specific  
6 requirements and the total loaded weight of the LGVs that the dock levelers would  
7 need to support. Specifically, E80 knew or had reason to know that Niagara  
8 required LGVs whose total loaded weight would be less than the stated 20,000  
9 pound limit of Rite-Hite's dock levelers. Likewise, Rite-Hite knew or had reason  
10 to know that its dock levelers would need to be able to carry loads up to 25,000  
11 pounds to conform to industry standards.

12 61. Accordingly, under California law, E80 and Rite-Hite each implicitly  
13 warranted that the LGVs and dock levelers they sold to Niagara, respectively,  
14 would be fit for Niagara's specific purposes.

15 62. Niagara justifiably relied on E80's and Rite-Hite's skill, expertise, and  
16 judgment, as they held themselves out as having particular knowledge and  
17 capability to design and deliver LGVs and dock levelers, respectively, that were  
18 suitable for their intended purpose and met Niagara's stated needs and  
19 requirements.

20 63. E80 and Rite-Hite each breached the implied warranty of fitness for a  
21 particular purpose by providing LGVs and dock levelers, respectively, that did not  
22 meet Niagara's specific purposes. As alleged herein, the LGVs and dock levelers  
23 were not suitable for the particular purpose that the parties agreed to. The LGVs  
24 are heavier than discussed between Niagara and E80, and therefore not suitable for  
25 Niagara's specific purposes. Likewise, the dock levelers did not meet Niagara's  
26 specific needs and were not capable of carrying the loaded weight of the LGVs in  
27 use at Niagara's facilities.

28 64. As a result of E80's and Rite-Hite's respective breaches of their

1 implied warranties for a particular purpose, Niagara has suffered damage in the  
2 form of its purchase price for products that did not meet their stated specifications  
3 or industry standards, as well as the expenses it incurred in replacing the failed dock  
4 levelers.

5 **Fifth Cause of Action**

6 (Strict Product Liability—Design Defect Against All Defendants)

7 65. Niagara incorporates by reference all preceding paragraphs of this  
8 Complaint.

9 66. As alleged herein, Rite-Hite designed, manufactured and installed the  
10 RHH4000 dock levelers acquired by Niagara for use at its facilities. Likewise, E80  
11 designed and manufactured LGVs for use at Niagara's facilities.

12 67. After learning of Niagara's requirements, Rite-Hite represented that it  
13 was capable of designing dock levelers that met Niagara's needs, and specifically  
14 that its RHH4000 dock levelers were rated to be able to carry loads up to 20,000  
15 pounds, with a 10-year life expectancy. However, the dock levelers were  
16 defectively designed in that they failed to conform to industry standards or to the  
17 specifications provided by Niagara to Rite-Hite to meet Niagara's needs and were  
18 inadequate to support the fully loaded LGVs that were used at Niagara's facilities to  
19 load Niagara's trucks.

20 68. Similarly, after learning of Niagara's requirements, E80 represented  
21 that it was capable of designing LGVs that met Niagara's needs, and specifically  
22 that in 2012 and later, the LGVs would weigh 6,500 kg. However, the LGVs were  
23 defectively designed in that they failed to conform to the specifications provided by  
24 Niagara to E80 to meet Niagara's needs and were overweight by approximately  
25 1,000 kg.

26 69. As a direct and proximate result of the design defects in the dock  
27 levelers and LGVs, Plaintiff has suffered damages in the form of its purchase price  
28 for products that did not meet their stated specifications or industry standards, as

1 well as the expenses it incurred in replacing the failed dock levelers.

2 **Sixth Cause of Action**

3 (Negligence Against Rite-Hite)

4 70. Niagara incorporates by reference all preceding paragraphs of this  
5 Complaint.

6 71. As herein alleged, Rite-Hite designed, manufactured, serviced, and  
7 installed the dock levelers in Niagara's distribution facilities.

8 72. Rite-Hite was negligent in its design, manufacture, servicing, and  
9 installation of the dock levelers in Niagara's distribution facilities in that the dock  
10 levelers were not able to carry loads up to 20,000 pounds, with a 10-year life  
11 expectancy, as represented by Rite-Hite, or the 25,000 pounds as required by  
12 industry standards, and that the dock levelers developed stingers, broken welds, and  
13 ultimately failed on a widespread basis requiring replacement of all Rite-Hite dock  
14 levelers.

15 73. As a result of Rite-Hite's negligence in the design, manufacture,  
16 servicing, and installation of the dock levelers, Niagara has suffered damages in the  
17 form of its expenses in replacing the failed dock levelers.

18 **Seventh Cause of Action**

19 (Misrepresentation Against All Defendants)

20 74. Niagara incorporates by reference all preceding paragraphs of this  
21 Complaint.

22 **Specific Allegations of Misrepresentation As to E80**

23 75. On September 20, 2012, E80 provided a PowerPoint presentation that  
24 included its recommendations to Niagara for LGV purchases. This presentation  
25 stated that E80's LGVs would weigh 14,330 pounds and have a total loaded weight  
26 of 19,530 pounds for all LGVs ordered in the future. E80 then repeated this total  
27 weight figure several times in 2013 and 2014.

28 76. This representation was false, and at a minimum, E80 had no

1 reasonable grounds for believing its representation as to the weight of its LGVs to  
2 be true.

3 77. E80 made this representation with the intent that Niagara rely on it.

4 78. Niagara did in fact rely on this representation in placing its orders for  
5 LGVs and this reliance was justified.

6 79. Niagara's reliance on E80's misrepresentation damaged Niagara,  
7 causing Niagara to spend millions of dollars on LGVs that did not conform to their  
8 stated specifications.

9 80. At a minimum, E80 made negligent misrepresentations to Niagara by  
10 making statements as to the actual weight of E80's LGVs which E80 had no  
11 reasonable basis to believe were true.

12 *Specific Allegations of Misrepresentation As to Rite-Hite*

13 81. In accepting Niagara's purchase orders, and in executing the Global  
14 Account Agreement, Rite-Hite represented that it would deliver dock levelers  
15 manufactured in accordance with industry standards, with a lifespan of at least 10  
16 years, and thus strong enough to meet Niagara's needs. On multiple occasions,  
17 Rite-Hite represented that it would manufacture and deliver dock levelers capable  
18 of carrying loads up to 22,500 pounds.

19 82. These representations were false, and at a minimum, Rite-Hite had no  
20 reasonable grounds for believing its representation regarding the ability of its dock  
21 levelers to carry 20,000 pounds or more, or that its dock levelers met industry  
22 standards, which would have required the dock levelers to carry 25,000 pounds, or  
23 that the dock levelers had a lifespan of at least 10 years.

24 83. Rite-Hite further demonstrated its awareness that it had misled Niagara  
25 when Rite-Hite omitted the repairs it was making on broken welds on the failing  
26 dock levelers.

27 84. Rite-Hite made these representations with the intent that Niagara rely  
28 on them.





1 weight of its LGVs was decreasing was false and misleading. E80 made these  
2 statements in order to induce Niagara to continue to purchase LGVs from E80.

3 92. Similarly, Rite-Hite's statements and representations to Niagara that its  
4 dock levelers were designed and manufactured in conformance with industry  
5 standards, that they had a lifespan of at least 10 years, and that they would be able  
6 to carry the weight required at Niagara's facilities were false and misleading. Rite-  
7 Hite made these statements in order to induce Niagara to accept Rite-Hite's dock  
8 levelers and to induce Niagara to continue to order dock levelers from Rite-Hite.

9 93. Niagara's reliance on E80's and Rite-Hite's false representations  
10 caused Niagara to purchase LGVs that did not meet its requirements, and dock  
11 levelers that were destined to fail.

12 94. Niagara would not have purchased the LGVs or dock levelers had it  
13 known the truth, causing Niagara to spend millions of dollars on products that did  
14 not meet their stated specifications or industry standards, as well as incur more than  
15 \$3,000,000 in costs replacing the failed dock levelers.

16 **PRAYER**

17 WHEREFORE, Plaintiff Niagara Bottling, LLC prays for the following relief  
18 against Defendants herein:

19 1. On all Causes of Action, for compensatory damages according to proof  
20 at trial;

21 2. On the Eight Cause of action, for treble damages, as well as costs and  
22 reasonable attorneys' fees;

23 3. For costs of suit herein, including reasonable attorneys' fees as  
24 authorized by law; and

25 4. For any other relief the Court deems just and proper.  
26  
27  
28

1 Dated: September 21, 2018

JONES DAY

2 By: /s/ Rasha Gerges Shields

3 Rasha Gerges Shields

4 *Attorneys for Plaintiff Niagara*  
5 *Bottling, LLC*

6  
7 **DEMAND FOR JURY TRIAL**

8 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Niagara  
9 Bottling, LLC hereby demands trial by jury of all issues which may be tried to a  
10 jury.

11 Dated: September 21, 2018

JONES DAY

12  
13  
14 By: /s/ Rasha Gerges Shields

15 Rasha Gerges Shields

16 *Attorneys for Plaintiff Niagara*  
17 *Bottling, LLC*